IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8746/03

Bharat Sanchar Nigam Ltd.,
Through Chief General Manager
Telecom, Maharashtra Circle,
Fountain Telecom-II, 7th Floor,
M.G. Road, Mumbai: 400 001. ... Petitioners

V/s.

M.B. Patel,
Deputy General Manager,
(Data Network), Pune.
Telecom District, Model Colony,
Telephone Exchange Building,
Pune 411 016 ... Respondent

Shri.V.S. Masurkar for petitioners.

Shri.S.P. Saxena for respondent.

CORAM : V.G. PALSHIKAR, &
V.M. KANADE, JJ.

DATED : 18th July, 2006.

ORAL JUDGMENT:-(Per V.M. Kanade, J.)

1. By this petition petitioners-Bharat Sanchar Nigam Limited seeks to challenge the judgment and order dated 06/05/2003 made by the Central Administrative Tribunal whereby it allowed the O.A. filed by the respondent and set aside the impugned order dated 27/09/2000 passed by the Disciplinary Authority and further directed that the

respondent would be entitled to get all the benefits including promotion which was due to him in the intervening period and further directed that he should be accordingly promoted from the date his immediate junior was promoted with grant of full monetary benefits.

2. Brief facts which are relevant for the purpose of deciding this petition are as under.

3. The respondent was appointed as Assistant Divisional Engineer on 01/06/1981 and in December 1985 he was promoted to the post of Divisional Engineer in Junior Administrative Grade. On 18/04/1995 chargesheet was issued against the respondent and disciplinary proceedings were initiated against him for five charges. One of the charges being that he had awarded work to certain persons without calling for tenders and caused loss to the company. Departmental inquiry was conducted and inquiry committee gave report that none of the charges were proved against the respondent. On 25/6/1998 Disciplinary Authority informed the respondents that it did not agree with the findings of the inquiry officer. Respondents made representation stating that findings of the inquiry officer be accepted and he be discharged.

UPSC was consulted by the Disciplinary Authority and it gave its advice and recommended that the ends of justice would be met in the case if the penalty of withholding of one increment for a period of one year without cumulative effect is imposed on the respondent. Taking into consideration the facts and circumstance of the case, accordingly, order of punishment was issued by the Disciplinary Authority and respondent challenged aforesaid order before Central Administrative Tribunal Bench by filing O.A. No.829/2000. O.A. filed by the respondent was allowed and hence present petition is filed.

4. It is submitted by the learned counsel for the petitioners that the tribunal had clearly erred in setting aside penalty imposed by the Disciplinary Authority. He submitted that it is a just penalty order for minor punishment and inasmuch as considering the loss caused to the company, major punishment ought to have been awarded by the Disciplinary Authority. Yet Disciplinary Authority had imposed minor punishment of stoppage of one increment. He submitted that there was no reason for the tribunal to interfere with the said order. Secondly he submitted that tribunal had exercised

jurisdiction not vested in it by law by directing that the petitioner should be promoted from the date his immediate junior was promoted with full monetary benefits. He invited our attention to the direction given by the tribunal in para 12 of the said order and submitted that said direction was clearly illegal and liable to be set aside.

5. On the contrary learned counsel for the respondent submitted that there was in-ordinate delay in awarding punishment of stoppage of one increment and during this period he had lost one opportunity of promotion. He further submitted that this fact was taken into consideration by the tribunal and by reasoned order, the aforesaid direction was given. He further submitted that there is no reason to interfere with the order passed by the tribunal.

6. In our view, so far first contention made by the learned counsel for the petitioners regarding observation made by the tribunal of the punishment awarded by the Disciplinary Authority is concerned, it is not possible to accept this submission. We have perused the order of tribunal and the tribunal has given cogent reasons for

setting aside the said order passed by the Disciplinary Authority. There is no error of jurisdiction or illegality in the said order which is passed by the tribunal in relation to the direction given by it in quashing the order passed by the Disciplinary Authority.

7. So far as second submission of the learned counsel for the petitioners is concerned, in our view, said submission will have to be accepted. Tribunal has observed in para 12 as under:-

> "12. In the above view of the matter, the OA succeeds and is accordingly allowed. The impugned order dated 27/3/2000, passed by the Disciplinary Authority is quashed and set aside. Consequently the applicant would be entitled to all the benefits arising from the above, including promotion, if it was due to him in the intervening period, he was considered for the same and found fit. In that event, his promotion shall be ordered by the respondents from the date, his immediate junior was promoted, and with grant of full monetary benefits. No costs."

8. In our view, it was not open for the tribunal to have given direction to the petitioners to promote respondent from the date his immediate junior was promoted. Tribunal, also erred in granting full monetary benefits of the said promotion. Tribunal had clearly exercised jurisdiction not vested in by law in issuing the said direction.

9. In the result, writ petition is partly allowed. Direction given by the tribunal of promoting respondent from the date his immediate junior was promoted with full monetary benefits, is quashed and set aside. Rest of the order, however, is upheld. Writ petition is partly allowed in above terms. Under these circumstances, there will be no order as to costs.

V.G. PALSHIKAR, J.

V.M. KANADE, J.